

### **REMARKS**

This is a reply to the Office Action dated December 12, 2007, in the above-referenced patent application. Applicant thanks the Examiner for carefully considering the application.

#### **Status of Claims**

Claims 1-15 remain pending. Claims 1, 5 and 10 are independent. Claims 1, 5-7 and 10 are amended for clarification. No new matter is added.

#### **Rejections under 35 U.S.C. § 102(e)**

Claims 1-2 and 4-15 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pub No. 2003/0235319 for Rass (Rass). This rejection is respectfully traversed.

Applicant's amended claim 1 requires "a method for achieving increased directivity in listening situations where at least one microphone is embedded in a first structure and at least one microphone is embedded in a second structure, the first and the second structure being freely movable relative to each other to a distance corresponding to sound wavelengths at low frequency, the method comprising conveying a microphone signal from one structure to a common processing unit for the microphone signals in the other structure and successively processing the signals for achieving a directional output based on the microphone input in both structures, wherein low-frequency directivity is enhanced by said processing." Applicant's amended claim 5 requires, in part, a means for conveying signals from a first and second microphone, movable relative to each other "to a distance corresponding to sound wavelengths at low frequency", to a "common processing unit" .. "wherein low-frequency directivity is enhanced by said common processing unit." (Similar limitations are found in claim 10.) Claim 6

in turn clarifies that the movable nature of the structures allows optimization for directivity processing of signals below 1000 Hz. Such low frequency directivity processing is not possible by conventional hearing assist devices due to size limitations (see Background of the Invention).

Rass in contrast does not teach, disclose or suggest processing the separate signals from movably spaced apart microphones to enhance low-frequency directivity. Rass discloses a hearing aid system with an external processor unit 1. Rass further discloses three microphones (11A, 11B, 11C) connected to a single pre-processing unit 12, which is connected to single signal processing unit 13 disposed in external processor unit 1. In Rass, the invention is designed to have different settings for different environments (e.g., in a vehicle). That is, when a user is in a vehicle, the user's hearing aid is within range of the external processor. When the user leaves the vehicle, the processor is also left behind and the system goes into a normal hearing aid mode (see Rass, paragraph [0044]). Nothing in Rass is directed to using the distance between two sets of movable microphones to enhance directivity processing for low frequencies.

Further, the external processor in Rass is designed to be permanently located in a specific zone (e.g., a vehicle) and does not move with the user. Distinguishable, in Applicant's claimed invention of claim 10 the processor is with the user (i.e., in the hearing aid).

In view of the above, Rass fails to disclose all of the limitations of independent claims 1, 5 and 10 of the present application.

According to MPEP §2131,

'[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' (Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). 'The identical invention must be shown in as complete detail as is contained

in the ... claim.’ (Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, *i.e.*, identity of terminology is not required. (In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)).

Therefore, Applicant respectfully asserts that a *prima facie* rejection under 35 U.S.C. § 102(e) has not been adequately set forth relative to Rass. Thus, independent claims 1, 5 and 10 are patentable over Rass for at least the reasons set forth above. Additionally, the claims that directly or indirectly depend on amended claims 1, 5 and 10, namely claims 2 and 4, 6-9, and 11-15, respectively, are allowable for at least the same reasons.

Accordingly, withdrawal of the rejection of claims 1-2 and 4-15 is respectfully requested.

### **Rejections under 35 U.S.C. § 103**

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rass in view of Official Notice. This rejection is respectfully traversed.

First of all, Applicant does not acquiesce in the Official Notice and such notice is inappropriate in this situation. As set out in MPEP §2144.03 “[i]t would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.” Here the Examiner is improperly using official notice for such specific teachings. Accordingly the Examiner is respectfully requested to provide a reference to support the rejection or withdraw the rejection in the next action.

Secondly it is respectfully submitted the Examiner's rejection is merely conclusory in nature.

According to MPEP §2142

[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that 'rejections on obviousness cannot be sustained with mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.' *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

Further, according to MPEP §2143, "[T]he Supreme Court in *KSR International Co. v. Teleflex, Inc.*, 82 USPQ2d 1395-1397 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham*." And, according to MPEP §2143.01, [o]bviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Further, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art." *KSR International Co. v. Teleflex, Inc.*, 82 USPQ2d 1385, 1396 (2007). Additionally, according to MPEP §2143

[a] statement that modification of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references

relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Pat. App. & Inter. 1993).

The assertions made in the Office Action on pages 5-6 that support the conclusion of obviousness are not explicit and the basic requirements of an articulated *rationale* under MPEP 2143 cannot be found. This in combination with the lack of a specific reference makes a rebuttal by Applicant impossible and a *prima facie* case of obviousness has not been made.

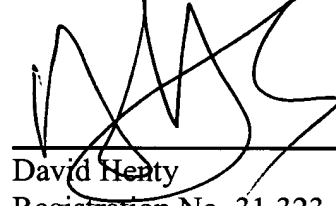
Finally, Applicant's claim 3 directly depends on amended claim 1. As discussed above, Rass does not teach, disclose or suggest the limitations contained in amended claim 1. Since neither Rass, the Official Notice, and therefore, nor the combination of the two, teach, disclose or suggest all the limitations of Applicant's claim 1, as listed above, Applicant's claim 1 is not obvious over Rass even in view of the Official Notice.

Accordingly, withdrawal of the rejection of claim 3 is respectfully requested.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicant believes that the claims are in condition for allowance. Reconsideration, re-examination, and allowance of all claims are respectfully requested. If the Examiner feels that a telephone interview may help further the examination of the present application, the Examiner is encouraged to call the undersigned attorney or his associates at the telephone number listed below.

Respectfully submitted,



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(Date)

David Henty  
Registration No. 31,323

Myers Dawes Andras & Sherman, LLP  
19900 MacArthur Blvd., 11<sup>th</sup> Floor  
Irvine, CA 92612  
(949) 223-9600  
(949) 223-9610 – Fax  
USPTO Customer No.: 23386